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What's the Difference?

A frequently asked question among new managers and supervisors is "What's the difference between a union member and a bargaining unit employee?"

Labor relations in the federal sector is governed by the "open shop" concept, which means that *all employees* in the bargaining unit are represented by the union, whether they like it or not. The union is the exclusive representative of bargaining unit employees concerning personnel policies, practices and working conditions. Union members, on the other hand, are those employees that choose to join a union and pay dues. Union members may comprise only a small proportion of the bargaining unit.

For supervisors, an employee's union membership is irrelevant. It is whether the employee is included in the bargaining unit that determines the supervisor's obligation to deal with the union.

Inside This Issue

Quiz Time

1. A supervisor has just been informed by a union steward that an employee who has requested union assistance in filing a grievance under the negotiated procedure will not get it because he failed to pay his union dues last year. Since the union refuses to represent the employee, who else may act as a grievance representative?
   a. A personal attorney.
   b. Any agency employee.
   c. A human resources specialist.
   d. None of the above.

2. During a recent representation election, less than half of the employees in the collective bargaining unit voted for the union which won the election and was subsequently granted exclusive recognition. Under that circumstance, can you argue that the collective bargaining agreement (and, therefore, the negotiated grievance procedure) does not apply to all employees?
   a. Yes, because the agreement only applies to those employees who join the union
   b. No, but employees who don't join the union have the right to substitute the agency grievance procedure for the negotiated grievance procedure

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Quiz Time
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c. Yes, because management has to have assurance that the union actually represents all bargaining unit employees.

d. No, because the outcome of the election is determined by a majority of people who actually vote in the election regardless of the number of people eligible to vote. The agreement applies to all bargaining unit employees equally.

3. Following the disappearance of several thousand dollars worth of office equipment, you have decided to interview all those employees likely to have any knowledge of the apparent theft. During your interview, a bargaining unit employee who is also one of the suspects in the matter makes several self-incriminating statements and is subsequently disciplined for theft. She later grieves, claiming that management knew she was a suspect and, therefore, had the responsibility to provide her with union representation during the interview even though she made no specific request to be represented. Did management violate the Statute[1] by failing to provide the employee with a representative during the investigative interview?

a. Yes, because the potential for discipline was apparent at the outsider

b. No, because management is responsible for providing a representative in this type of situation only when the employee requests it.

c. No, because the facts, which actually led to the discipline, were not discovered until the interview was already in progress.

See "Union Rights," Page 3

Got Ideas? You can contact us at nwlabor_nw@nw.hroc.navy.mil. We would enjoy hearing your ideas for our newsletter.

[1] Reminder: The Statute refers to Management Relations Statute, 5 USC 71

Changes in Working Conditions
Union Notification

We've been talking about union rights in this issue. Let's talk a little about the union's right to be notified whenever *any substantive change in working condition* is to take place. Sometimes, when establishing a new program or instituting a new practice, managers forget that the change may affect bargaining unit employee working conditions in a way which management did not anticipate.

Failure to recognize the potential for such impact and notify the appropriate union may cause significant problems for both management and the union. When the union learns that a new practice that affects working conditions has been instituted without its being notified in advance, its normal recourse is to file an unfair labor practice charge.

The following examples illustrate management's obligation:

A shop determined that it would need to work a special extended schedule on the graveyard shift. The new work schedule included both a change in the normal hours of work (the new shift ended at 0600 hours rather than the usual 0800) as well as a change in the employee's normal workdays. While management had a right to *determine tours of duty* under the Statute and to establish *non-standard work schedules* under the negotiated agreement, there is an obligation to notify the union of the change and bargain as appropriate.

In another case, management made a decision to transfer certain job responsibilities from employees of one classification to those of another. Journey-level mechanics were to be required to perform prior inspections of their work projects. Inspectors had formerly performed this task. This change was announced to the employees without prior notification of the unions. Management was acting within its

authority to determine *numbers, types and grades of employees to be assigned to a work project*. But the exercise of this right certainly affected conditions of employment and obligated management to notify the union in advance.

Here's another example. A certain shop with a number of different trades decided that it would be a good idea to give some of its mechanics training in one of its other trades so that it would be better able to handle its workload fluctuations. Again, management acted in accordance with its right to assign work but failed to notify the union. Other examples of matters over which unfair labor practice charges have been filed because of management's failure to notify have included implementing smoking restrictions, establishing new performance standards, imposing dress codes, restricting the playing of radios, introducing new forms or surveys to be filled out by employees, and requiring employees to use sign in/sign out boards.

Any change which affects working conditions creates an obligation to notify the union and provide the union an opportunity, where appropriate, to negotiate "procedures which management officials of the agency will observe in exercising any authority" or "appropriate arrangements for employees adversely affected by the exercise of any authority … by such management officials." (see 5 USC 7106 (b) (2) and (3).

We commonly refer to this as "Impact and Implementation" (I&I) bargaining. Under the Statute's provisions for I&I bargaining, the union has a right to negotiate concerning the impact of a particular policy or the manner in which the policy will be implemented rather than the policy itself. Should the union respond to such a notice by invoking I&I bargaining, management will be barred from implementing the policy until the bargaining and discussions are completed (there are some extreme exceptions to this rule). Although managers may become impatient with the delays these procedures create, law requires them.

As a manager contemplating making a change which may affect working conditions, you should consider the unions which represent the employees to be affected as customers whose needs should be seriously considered. These particular customers voice their dissatisfaction with your failure to satisfy their requirements by filing unfair labor practice charges.

Too many times I hear "But what could the union possibly negotiate?" That's not management's concern. What is our concern is to comply with the law. Management's job is to notify. The union's job is to formulate negotiable proposals. Let's make sure we do our part.

What rights does a Union have?

UNION RIGHTS

This is a series of quiz articles covering basic entitlements under the Federal Labor Management Relations Statute (5 USC 71). This article is 3 of 10.

OK, in order to answer these questions, you're going to have to know what the Statute requires. The Statute states that a labor organization which has been accorded exclusive recognition:

- may negotiate agreements for all employees in the collective bargaining unit
- is responsible for representing the interests of all bargaining unit employees whether they are union members or not;
- must be given the opportunity to be represented at all formal discussions between management and employees concerning grievances, personnel policies and practices, or other general conditions of employment;
- must be given the opportunity to be present at any investigative examination of a unit employee, if:

1. the employee reasonably believes the examination may result in disciplinary actions; and
2. the employee requests representation.

That's quite a few Union rights. But with those rights comes management responsibilities. That is why a union cannot refuse to represent a bargaining unit employee under the negotiated grievance procedure, whether he is a member of the union or not, as long as other unit employees would have received representation under similar circumstances. Neither management nor the union can discriminate on the basis of union membership. Since the union is responsible by law for representing an employee, representation by anyone else is inappropriate. The correct answer for question 1 is "d".

Once a union is granted exclusive recognition and an agreement has been negotiated, the agreement applies to all bargaining unit employees equally. It doesn't matter how large or small a percentage of employees actually voted in the election. The correct answer to question 2 is "d".

The Statute specifically requires that two conditions be met before an employee must be permitted to have a union representative during an investigative examination. First, the employee must "reasonably" believe that the examination is likely to result in disciplinary action. From the information we have it doesn't look like this requirement is present in this situation. Also, since there was no request for representation in this situation, the employee's right to a representative was lost. The correct answer to question 3 is "b" (If you'd like to read more about "Weingarten Rights," see our past issues, Volume 1 Issues 1 and 2.).

Next issue's quiz: "Formal Discussions."

More on Military Leave

In our last issue we talked a lot about military leave. However we didn't talk about employees serving in the Reserves or National Guard may now use part of their 15 days of military leave for funeral honors duty. Section 563 of Public Law 107-107, National Defense Authorization Act for Fiscal Year 2002 (effective December 28, 2001), amended section 6323(a)(1) of title 5, United States Code (U.S.C.) to include this provision. Under 5 U.S.C. 6323(a), an employee is entitled to military leave without loss of pay, time, performance or efficiency rating for active duty, inactive-duty training, funeral honors duty, or engaging in field or coast defense training. An employee on military leave under section 6323(a) is entitled to receive both civilian and military pay. Section 562 of Public Law 107-107 amended Section 12503(a) of title 10, United States Code, and Section 115(a) of title 32, United States Code, to stipulate that funeral honors duty is treated as inactive-duty training. These amendments apply to funeral honors duty performed on or after October 30, 2000.

Employees who request military leave for funeral honors duty will be charged only the amount of military leave necessary to cover the period spent performing such duty and necessary travel. Congress enacted these provisions to support funeral honors for veterans' funerals.

Other Helpful Resources

Past Issues of Labor News and Views www.donhr.navy.mil/HRSC/NewsItem.asp?ItemID=67&ItemArea=5
General Human Resources information: http://www.donhr.navy.mil/Employees/cpp.asp
Training information: www.donhr.navy.mil/Employees/training.asp